

MINUTES DRAFT
Of the October 22nd, 2008
Woods Bay/Bigfork 440 Working Group
Held at 10:00am Saddlehorn Office, Bigfork

Mr. Darrow called the meeting to order with the following members present:
George Darrow, Jim Frizzell, Clarice Ryan, Donna Lawson, Kitty Rich, Tracy Reiling, Anne Moran (DNRC), Greg Poncin (DNRC), Steve Brady (USFS),

Absent: Dave Landstrom (MFWP)

Minutes of the October 2nd meeting were reviewed and approved

Anne Moran opened the discussions with a handout (attachment to minutes) and overview of all of the tools available for the group to use to achieve our desired goal:

- 1.) Compensation to Beneficiary
- 2.) Land Management/Access – Timber, Weeds,
- 3.) Fire Safety – Fuel Reduction
- 4.) Education – Living Classroom
- 5.) Preservation of Wildlife Corridors and uniqueness of area
- 6.) No Development
- 7.) Do this in a timely manner

These tools are given in no order of preference nor is there any preferred tool. They will all be fully outlined and discussed and should all be given consideration. Keep in mind that they can be used in any number of combinations. Using one tool would not exclude the use of others. Some of the tools may not even be available, or work for this project. It is just important to understand all tools and the way they all work, so that we can be open-minded about all possible opportunities.

LAND EXCHANGE: A LAND TRANSACTION

Can be done with other state agencies or with private parties. This was discussed by Steve Brady and Greg Poncin relating to the success of land exchanges between the USFS and the DNRC. Many have been initiated and have been abandoned without success. One exchanged occurred in the 90's, another in Pleasant Valley is underway and involves a 3 party exchange including the Rocky Mountain Elk Foundation. Other possible exchange partners could include the USFWP, the BLM, the Tribes, and/or many foundations. Kevin Gownley was not present at this meeting, but left the message that he is in contact with the Rocky Mt Elk Foundation and will have an update on his finding at the next meeting.

EASEMENTS (for public good): A LAND USE AUTHORIZATION

Permanent or use easements are available. A permanent easement is essentially similar to selling a piece of land to a user, in that they have purchased the right to use the land for a particular purpose indefinitely, provided the use of the land does not change. Sale of use can be done without the sale of property. The use sale is only valid for the intended use and this cannot be changed. If it is determined the intended use has changed the easement rights would be lost and the land would return to DNRC.

LICENCES: A LAND USE AUTHORIZATION

Needed when the use sale is for other than the defined land classification (i.e., Forest, Agricultural, "Other," etc.)

The 440 is now classified as Forest Land. Land classifications can be changed through a DNRC-initiated procedure. Land Use Licenses are issued for up to 10-year terms. LEASES: A LAND USE AUTHORIZATION

Leases are the land use authorization employed when use is consistent with classification. Leases are generally long term, and can be issued for 15-40-99 years, depending on the type of lease. Conservation use leases are seen in the 50-99 year range. Lease terms are figured from a percentage of market value. Special use terms can be negotiated but adjustments must be made to insure that the beneficiary is continuing to receive market value.

NATURAL AREA: LAND USE AUTHORIZATIONS

By designating a natural area you are not absolving the need to compensate the beneficiary, so other tools would be needed along with Natural Area Designation. For example, the Owen Sauerwine Natural Area is authorized by way of a lease.

CONSERVATION TECHNIQUES: LAND PROTECTION PARTNERING W/ DNRC

CONSERVATION DEVELOPMENT:

By selling development rights to a conservation buyer, a very small portion may be developed with the major portion being left in such a way that it meets our 7 mutually agreed-to goals. Lake County density for the 440 is now set at one unit per 20 acres. Terms may be negotiated per the set goals of the 440 if we were to find the right customer for development rights.

CLUSTER DEVELOPMENT:

Clustering involves a denser development of one portion of a tract, with the goal being to preserve open space intact in the other portion of the tract. Clustering requires county approval because it involves more development on smaller parcels. 49% or less of parcel developed, leaving 51% or more to open space.

LAND BANKING: LAND TRANSACTION

Although we have determined land banking not to be preferable, there is a chance that a potential change in the Land Banking Statute may provide for the possibility to land bank just the development rights, not the property, which might provide for an alternative to the community's benefit on this particular property.

This February in Helena a proposed legislative bill will change wording in the Land Bank Statute that would allow selling development rights.

Greg Poncin then offered that we will have a greater chance of achieving our goals by using any number of combinations of the tools together and the DNRC will work with us using the time table of Immediate – Intermediate – Long Term

Don not lose sight of the goal and do not be afraid to use many combinations of tools available.

Jim Frizzell wanted to know if the DNRC could try to determine the value of the 440 with the possibility of a land exchange with the USFS. Anne Moran talked about the costs to come up with the value and support such a process. The MEPA and NEPA procedures can be expensive, and may range into the 6 figures. Steve Brady had previously pointed out that Environmental Analysis (vs. Environmental Impact Statement) can sometimes be used. She suggested we might benefit from

hearing from Linda Smith a USFS Land Specialist. As an action item we agreed that she would be invited to the next meeting to give a presentation, for further education in the matter.

Greg (DNRC) added that he and Steve (USFS) have previously met for an hour and a half, regarding the land exchange. Both came to the conclusion that success would be marginal.

Clarice recalled that Steve made the statement at a past meeting that the USFS was not interested in acquiring another urban interface parcel. Steve was not present at the time of this discussion, so we will need to find out what the USFS stance is.

Meeting was adjourned.

Next meeting is scheduled for November 12th 8:30 am Saddlehorn

COPY OF MEETING HANDOUT:

THERE ARE A VARIETY OF TOOLS TO ASSIST IN IMPLEMENTING AN APPROVED PROJECT. ANY OF THE FOLLOWING APPROACHES MAY BE UTILIZED:

Land Use Authorizations

Licenses – Typically short term (1-10 year) agreements that allow a use secondary to the primary use of the land (e.g., a trail license on a parcel primarily managed for timber production). The Real Estate Management Bureau (REMB) will emphasize long-term licenses with a high rate of return over short-term leases as specified in the surface management rules.

Leases – Typically a longer-term rental agreement (10-99 years) authorizing a use that may replace resource management as the primary use of the land. Projects achieved through long-term leasing will be completed in accordance with surface management rules and statute (77-1 Part 2, MCA, 77-1-Part 9, MCA). Any commercial or industrial lease that will generate annual revenue in excess of \$50,000 will be subject to approval by the Board of Land Commissioners.

A **Natural Area designation** per MCA 76-12-101 through 123 would likely take the form of a lease; however, the Statute did not seem to preclude designation under an easement scenario.

Easements – A long-term or permanent interest in land owned separate from the fee simple interest that entitles the holder to specific limited use or enjoyment (e.g. allows access or limits development). The REMB will continue to respond to requests for easements on state lands for both private and public purposes per Land Board policy. The Board of Land Commissioners will accomplish the sale of conservation easements or partial ownership rights through an application process that includes an appraisal, MEPA compliance, and approval.

Land Transactions

Permanent disposition of Trust property is appropriate under certain circumstances. Unlike the traditional sales process, the land banking and exchange processes offer opportunities to replace certain Trust lands with other lands that have greater value to the Trusts.

Land Banking – as authorized under Land Banking rules and Montana Statutes (77-2-Part 3, MCA) will serve as the process template for land sales.

Land Exchange – as authorized under the Land Exchange policy of the Land Board, which includes a two step review by the Land Board, and Montana statutes (77-2-Part 2, MCA) will serve as the process template for all land exchange projects. A land exchange could occur with an entity whose management objectives more closely match the community preference for the subject parcel such as, possibly, the U.S. Forest Service.

Land Sales– Land sales (other than land banking) may be completed in accordance with surface management rules and statute (77-2-Part 3, MCA).

FLEXIBLE MENU OF TECHNIQUES TAILORED TO CONSERVATION OBJECTIVES TO PROTECT LAND:

In order to meet community objectives, a full range of conservation techniques could be considered. Some of these techniques involve complicated real estate transactions and concepts. The benefit of these approaches is that the DNRC can obtain fair return for the lease or sale of land or interests in its property in a variety of different ways that may tap both private and public resources efficiently. A number of these techniques encourage private landowners and the DNRC to be partners with the community in protecting land.

Conservation Easements. A conservation easement is typically a permanent deed restriction on future development on land to protect recreation, open space, scenic or wildlife qualities.

Conservation Buyer. A conservation buyer is a purchaser of a limited and defined development parcel (e.g., a five-acre home site) in conjunction with the purchase of a conservation easement on a larger area of School Trust land that would remain undeveloped and available to resource management and public access. This concept seeks to capture a premium for “exclusive” home sites.

Conservation Development. Conservation development involves a limited amount of development on a property done in a manner that protects the open space/recreation, natural environment and resource production qualities of the land.

Cluster Development. Cluster development uses a more compact pattern of development than large lot development. By placing smaller lots on less than half the total land area of a parcel, this type of development protects open space/recreation, natural environment and resource production qualities of the land.